



February 26, 1999

Ms. Linda Wiegman
Supervising Attorney
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR99-0562

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121497.

The Texas Department of Health ("TDH") received a request for information relating to TDH's investigation of Park Place Medical Center. You ask whether portions of the requested information must be withheld pursuant to section 552.101 of the Government Code which requires withholding, *inter alia*, information made confidential by statute.¹

Some of the submitted information consists of federal HCFA 2567 forms. Federal regulations require release of these forms, provided that (1) no information identifying individual patients, physicians, other medical practitioners, or other individuals shall be disclosed, and (2) the provider whose performance is being evaluated has had a reasonable opportunity to review the report and to offer comments. *See* 42 C.F.R. §§ 401.126, .133; Open Records Letter No. 97-2246 (1997). Accordingly, after giving Park Place Medical Center a reasonable opportunity to review the HCFA 2567 forms and redacting identifying information, you must release the HCFA 2567 forms.

You also ask whether the submitted "Reports of Contact" are subject to the above-mentioned federal regulations. We have previously determined that they are not. *See* Open Records

¹TDH failed to timely request an open records decision from this office. Gov't Code § 552.301. In most cases, failure to timely request a decision results in the legal presumption that the requested information is presumed to be open to the public, and only the demonstration of a compelling interest can overcome the presumption. *See Hancock v. State Bd. Of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). However, the presumption of openness is overcome when the requested information is deemed confidential by law. *See* Open Records Decision No. 150 (1977).

Letter Nos. 99-0483 (1999), 99-0447 (1999). Accordingly, you may not withhold any information contained in the Reports of Contact under these regulations.

Finally, you contend that portions of the information in the "Reports of Contact" are made confidential by section 161.032 of the Health and Safety Code. Section 161.032 provides, with exceptions which do not appear to apply here, that "[t]he records and proceedings of a medical committee are confidential." *See* Health & Safety Code § 161.031 (defining "medical committee"). We have marked the information that is confidential under section 161.032. TDH must withhold the marked information from disclosure under section 552.101 of the Government Code as information deemed confidential by law. Except as noted, you must release the requested information.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 121497

Enclosures: Marked documents

cc: Ms. Liz Wiggins
KFDM-TV
2955 I-10 East
Beaumont, Texas 77702
(w/o enclosures)

²We note that you also ask questions which do not relate to the availability of the particular information at issue here. As the issues you raise are outside the scope of this ruling, we do not address them at this time.

Mr. Samuel Adams
Port Authur News
549 Fourth Street
Port Authur, Texas 77641
(w/o enclosures)

Ms. Amy Upshaw
Beaumont Enterprise
P.O. Box 3071
Beaumont, Texas 77704
(w/o enclosures)